

2005 BCSECCOM 589

September 8, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Rules s. 162(3) - Exemption from the Valuation Requirements - An issuer wants relief from the requirement to obtain a formal valuation in connection with an issuer bid for its outstanding securities - A liquid market for the issuer's securities exists prior to the bid; after the bid, there will be a market for the issuer's securities that is not materially less liquid than before the bid

Applicable British Columbia Provisions

Securities Rules, B.C. Reg. 194/97, ss. 162(2) and (3)

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova
Scotia and Newfoundland and Labrador

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Emergis Inc. (the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that, in connection with the proposed purchase by the Filer of a portion of its outstanding common shares without nominal (Shares) by way of an issuer bid (the Offer), the Filer be exempt from the requirement in the Legislation to obtain a formal valuation of the Shares and provide disclosure in the circular of such valuation or a summary thereof (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

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- (a) the Alberta Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts presented by the Filer:

1. The Filer is a reporting issuer or the equivalent in each of the Jurisdictions.
2. The Filer is not in default of any requirement of the Legislation and is not on the list of defaulting reporting issuers maintained pursuant to such Legislation, where applicable.
3. The authorized capital of the Filer consists of an unlimited number of Shares without nominal value, and an unlimited number of preferred shares, issuable in series (the Preferred Shares). As at August 2, 2005, there were 99,420,167 Shares and no Preferred Shares issued and outstanding.
4. The Shares are listed and posted for trading on the TSX under the symbol "EME". On August 2, 2005, the closing price of the Shares on the TSX was \$3.21 per Share. Based upon such closing prices, the Shares had an aggregate market value of approximately \$319 million on such date.
5. To the knowledge of the directors and officers of the Corporation, the only persons who beneficially own or exercise control or direction over more than 10% of the Shares are: (i) Crescendo Partners II L.P. Series M (Crescendo Partners); and (ii) Letko, Brosseau & Associates (Letko). The Corporation has been informed by Crescendo Partners that, as of August 2, 2005, it owned 13,649,300 Shares, representing 13.7% of all issued and outstanding Shares. Based on publicly available information and to the Corporation's knowledge, Letko owned, as of August 2, 2005, 13,757,025 Shares, representing 13.8% of all issued and outstanding Shares.
6. Pursuant to the Offer, the Filer proposes to acquire Shares in accordance with a modified Dutch auction procedure:
7. During the 12 months ended August 2, 2005:

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- (a) the number of outstanding Shares was at all times at least 5,000,000, excluding Shares that either were beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties to Emergis or were not freely tradeable;
 - (b) the aggregate trading volume of the Shares on the TSX was at least 1,000,000, Shares;
 - (c) there were at least 1,000 trades in Shares on the TSX; and
 - (d) the aggregate trading value based on the price of the trades referred to in paragraph (c) above was at least \$15,000,000.
8. The market value of the Shares on the TSX was at least \$75,000,000 for the month of July 2005.
9. As a result of the information contained in representations 7 and 8 above and because it is reasonable to conclude that, following completion of the Offer, there will be a market for the beneficial owners of Shares who do not tender to the Offer that is not materially less liquid than the market that exists at the time the Offer is made, the Filer intends to rely upon the exemptions from the Valuation Requirement contained in subsection 3.4(3) of both Quebec Regulation Q-27 of the *Autorité des marchés financiers* and Ontario Securities Commission Rule 61-501 (the “Presumption of Liquid Market Exemption”).
10. The Circular will:
- (a) disclose the facts supporting the Filer’s reliance on the Presumption of Liquid Market Exemptions, calculated with reference to the date of the announcement of the Offer; and
 - (b) except to the extent exemptive relief is granted, contain the disclosure prescribed by the Legislation for issuer bids.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted.

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DATED at Calgary, Alberta on this 8th day of September, 2005.

Agnes Lau, CA
Deputy Director, Capital Markets